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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,368	07/31/2000	Linda J. Babinski	J 2990	5421

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EXAMINER

ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF=7

Office Action Summary

Application No.

09/629,368

Applicant(s)

BABINSKI ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

- 1 This action is responsive to the amendment filed on January 24, 2002.
- 2 The rejection of claims 2,4, 9, and 15 under 35 U.S.C. 112, second paragraph, in withdrawn because of the applicant's amendment.
- 3 The rejection of claims 1-33 under 35 U.S.C. 103(a) as being unpatentable over Nogami et al. (WO' 98/56337), is withdrawn because of the applicant's amendment.

NEW GROUND OF REJECTION

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nogami et al. (WO' 98/56337) in view of Yuhas (US' 4,226,889).

Nogami (WO' P 337) teaches aqueous malodor reducing composition (see page 1, lines 9-17). This composition comprises, from about 0.0001 % to about 1% by weight of fragrance materials such as amber and musk (see page 8, lines 7-10) having C log P of not less than 3.5. (see page 7, line 5), from about 0.1% to 35% surfactants such as nonionic, and/or anionic and/or cationic and/or ampholytic (see 8, lines 14-16), diethylene glycol as non-volatile organic compound (see page 20, line 16), alcohol ethoxylates (see page 11, line 16); metal salts such as copper and zinc salts as odor absorbers as well as other adjunct odor-controlling materials, antistatic and insect and moth repelling agents (see page 25, lines 3-7), buffering agents such as

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succinic and citric acids and their sodium salts (see page 27, lines 9-13), solvents such as ether derivatives of mono-, di- and tri-ethylene glycol (see page 28, lines 34-35) and water as a balance carrier (see page 19, lines 16-25). Nogami also teaches a method for using aqueous malodor reducing composition. The method comprises the step of applying of the composition to the fabrics, households or skin (see page 59, lines 33-35 and page 60, lines 1-11). The compositions have pH 4 (see page 64, Examples I-III). Regarding the percentage ranges of the perfumes and the surfactants, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ any percentage range of perfumes and surfactants since these ranges are overlapping with the range taught by the reference, because an ordinary person would have the reasonable expectation that any range of percentages within the limits would give compositions with similar properties as those claimed.

The instant claims differ from the reference by reciting a composition for reducing malodor impression comprising fragrance components selected from fresh clean, spicy, floral, citrus, ozone and marine type perfumes.

Yuhas (US' 889) in analogous art teaches a deodorant cosmetic composition comprising fragrance components such as the floral and the spicy groups (see col. 2, line 68 and col. 3, line 1).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art would have been motivated to modify the primary reference by using fragrances such as spicy and floral as taught by Yuhas to make such a composition. Such modification would be obvious because one would expect that the use of floral and spicy as taught by Yuhas would be similarly useful and applicable to the analogous composition taught by Nogami.

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5 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Applicant's Arguments

6 Applicant's arguments filed 1/24/2002 have been fully considered but they are rendered moot in view of the new ground of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa

March 17, 2002

GREGORY DELCOTTO
PRIMARY EXAMINER

